**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**

**ORDINARY ORIGINAL CIVIL JURISDICTION**

**APPEAL NO.605 OF 2002**

**IN**

**CHAMBER SUMMONS NO.696 OF 2001**

**IN**

**SUMMARY SUIT NO.4150 OF 1997**

M/s Seksaria Sons Pvt.Ltd. ...Appellants

v/s

M/s Veetrag Investments and Finance Co. and ors. ...Respondents

Mr Bagla i/b M/s Bagla Dandekar and Co. for Appellants.

Mr V.B. Naik with Mr V.N. Kantawalla for Respondents.

**CORAM : D.K. DESHMUKH AND J.H. BHATIA JJ.**

**DATE : 25TH OCTOBER 2007.**

P.C. :-

1. For the purpose of disposing off this appeal, following can be taken as admitted position. There was a money decree passed in favour of M/s Veetrag Investments and Finance Co., the respondent No.1 and against M/s Premier Brass and Metal Works Pvt.Ltd., the respondent No.2. The respondent No.2 was occupying certain commercial premises as tenants. The landlords of those premises are the present appellant - M/s Seksaria Sons Pvt.Ltd. In execution of that money decree, the tenancy rights of the judgment debtors - M/s Premier Brass and Metal Works Pvt.Ltd. were attached and sold. That attachment and sale was challenged by the present appellants by filing chamber summons No.696 of 2001. That chamber summons has been decided by the learned Single Judge of this Court by order dated 6th/7th February 2002. He held that tenancy rights cannot be attached and sold in execution of the decree. It appears that there was difference of opinion on the question viz. whether tenancy rights can be attached and sold. That question was considered by Full Bench of this Court in the case of Tanagerine Electronics Systems Pvt.Ltd., Mumbai v/s Indian Chemicals, Mumbai and ors. reported in 2004(2) Mh.L.J. 305 and the Full Bench

admittedly has expressly overruled the view taken by Hon'ble Mr Justice J.A. Patil in his judgment dated 6th/7th February 2002 which is impugned in this appeal. But in this appeal, we are really not concerned with that. The order which is impugned in this appeal is in favour of the appellants basically, the only part of the order against which this appeal was preferred is that though the learned Single Judge has set aside the sale, he continued the attachment of the premises. Now, as the sale of the tenancy rights has been held valid by reason of the judgment of the Full Bench, there is no question of any attachment continuing and therefore, really speaking, the appeal has become infructuous. This appeal is filed by the landlord of the premises. The Full Bench in its judgment has categorically observed that they are not deciding the rights that the landlord may have against the assignee. Therefore, it is clarified that though the Full Bench has held that the sale of the tenanted premises can be validly done, any rights that the landlord may have against the assignee are still available to the landlord and that the landlord will be free to proceed against the assignee in exercise of any rights that the landlord may have against the assignee. It is also clarified that what was sold by auction was the tenancy rights of the judgment debtor and the sale does not in any way affect the ownership rights of the landlord. Appeal is

disposed off.

. Parties to act on the copy of this order duly authenticated by the Associate / Private Secretary of the Court.

. Certified copy expedited.

( D.K. DESHMUKH J.)

( J.H. BHATIA J.)